

REMARKS

Claims 1-5 are pending in this application. All of the pending claims are rejected. Claims 1-5 are currently amended. Reconsideration and further examination are requested.

Claims 1-5 are rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. The examiner suggests that MPEP 2100 should be consulted for the proper preamble for computer related inventions. Since MPEP 2100 does not specify any particular language, the claims are currently amended in accordance with the explanation in MPEP 2106.01.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by US 2005/0003827 (Whelan). In particular, the Office cites Whelan at the abstract and paragraphs [0016, 0333]. Applicant respectfully traverses. As described in the abstract of Whelan, the system uses “signal data and network traffic statistics **collected by mobile units** to determine optimal configuration settings for the access points.” (emphasis added) Similarly, paragraph [0016] states “the disclosed channel, coding, and power management system uses signal data and network traffic statistics **collected by the mobile units** to determine optimal configuration settings for the access points.” (emphasis added) Claim 1 of Whelan also recites the feature as a limitation. Paragraph [0333] simply describes same channel interference. Whatever purpose there may be for using data collected by mobile units, claim 1 recites logic associated with a program product for use in a fixed-location device. Consequently, there is no need for data collected by mobile units. Among the advantages of the claimed invention over Whelan is that there is no need for mobile units to be modified to provide signal data and network traffic statistics, which is

something that products currently shipping do not do. Further, Whelan's technique is designed for use by a central management device such as a server, whereas the claimed invention is operational in a distributed manner, i.e., the APs manage themselves. The distributed nature of the claimed invention helps to avoid scalability and single point of failure problems. Since the recited limitations are not taught by Whelan, withdrawal of the rejection is requested.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) based on Whelan in view of US 2005/0195786 (Shpak). The Office concedes that Whelan fails to disclose logic for adjusting transmit power in response to a message from another access point, but asserts that Shpak describes an analogous transmit power control (TPC) message at [0008, 0040]. Shpak 2005/0195786 does not qualify as prior art under 103(a) because it was filed subsequent to this application. The following statements are therefore based on earlier applications in the chain of priority of Shpak 2005/0195786 that qualify as prior art. Nevertheless, these statements are equally applicable to Shpak 2005/0195786. Claims 2 and 3 distinguish the cited combination for the same reasons stated above with regard to claim 1. Further, applicant is unable to find any suggestion that the message indicates "the power level of the second fixed-location device," as recited in claim 3. Withdrawal of the rejections is therefore requested.

Applicant is pleased to acknowledge that claims 4 and 5 are allowable except for the 35 U.S.C. 101 informality. If the language adopted to overcome that rejection is unacceptable to the examiner, applicant invites an alternative suggestion.

Applicants have made a diligent effort to place the claims in condition for allowance.

Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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Date

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